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| APPLICATION NO. | FILED DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------------------------|------------|----------------------|---------------------|--------------------|
| 09/965,193 | 09/26/2001 | Brian Gitt | 021237-000100US | 2809 |
| 28778 | 7590 | 02/23/2005 | EXAMINER | |
| JOHNSON & STAINBROOK, LLP 3558 ROUND BARN BLVD., SUITE 203 SANTA ROSA, CA 95403 | | | | BEISNER, WILLIAM H |
| ART UNIT | | PAPER NUMBER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|---------------------------------------|-------------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/965,193 | GITT, BRIAN | |
| | Examiner William H. Beisner | Art Unit 1744 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 October 2004 and 01 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10, 14-16, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5, 7-10, 14-16, 19 and 20 is/are rejected.
- 7) Claim(s) 6 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 1-5, 7-10, 14-16, 19 and 20 is withdrawn in view of the newly discovered reference(s) to Price et al.(EP 0196887) and Ostanin et al (RU 2054402). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price et al.(EP 0 196 887).

The reference of Price et al. discloses a method of using a composting apparatus (110) that includes placing a compostable material and composting organisms into a container (112).

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The container (112) has a plurality of side regions and a bottom region defining an inner region (114). The bottom region includes a plurality of apertures (118) through which composted material can pass through. The material is composted in the device and agitated by breaker bar (20) and the material passed through the apertures (See page 9).

With respect to claim 19, while the reference discloses the use of breaker bar system or agitator, the reference is silent as to the use of manual agitation.

The reference discloses that smaller size containers can be used (See page 7, lines 1-5).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to manually actuate the breaker bar system for the known and expected results of providing the required agitation while eliminating the need and expense for an electric motor or other related electrical components. A smaller system would allow for the use of manual agitation since the volume of material would be less.

With respect to claim 20, the reference discloses the use of a receiving structure (150) for receiving the composted material.

5. Claims 1-5 and 7-10 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Price et al.(EP 0 196 887) in view of Ostanin et al.(RU 2054402).

The reference of Price et al. discloses a composting apparatus (110) that includes container (drawer, 110) that includes a bottom region with a plurality of apertures (118) and a receiving structure (150).

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Claim 1 differs by reciting that the composting device includes a plurality of containers or drawers positioned within a housing wherein the containers or drawers are in a stacked relationship.

The reference of Price et al. discloses that the device can be positioned within an enclosure or housing (See page 10, lines 14-22).

The reference of Ostanin et al. discloses that it is known in the art to provide a plurality of composting containers or drawers in a stacked and/or back-to-back relationship (See Figure 5).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the containers of the device of the primary reference within a housing for the known and expected result of controlling the environment in which the composting takes place. It would have also been obvious to one of ordinary skill in the art to provide a plurality of containers in a stacked relationship for the known and expected result of providing a means recognized in the art for simultaneously performing a number of different composting steps within the same system.

Note in the absence of further positively recited structure with respect to the structure of the drawer and/or relative cooperation with respect to the claimed housing, the use of trays or containers which can be removably positioned within a housing is considered to meet the structural limitation of a drawer and housing as recited in the instant claims.

With respect to claim 2, the device of Price et al. discloses the use of breaker devices (20) for harvesting or collecting the compost material from the bottom of the container through the apertures.

With respect to claim 3, the reference of Ostanin et al. discloses positioning the containers or trays (drawers) in opposite directions (See Figure 5).

With respect to claim 4, the use of spacer elements would have been obvious for the known and expected result of ensuring that air circulation is maintained within the environmental enclosure or housing.

With respect to claim 5, the reference of Prices et al. discloses the use of an environmental enclosure (See page 10, lines 14-22).

With respect to claim 7, as discussed above the reference of Ostanin et al. suggests the stacking of the composting devices.

With respect to claims 8-10, use of the device as suggested by the combination of the references of Price et al. and Ostanin et al. would result in a method of use as encompassed by claims 8-10.

With respect to claims 14-16, the combination of the references of Price et al. and Ostanin et al. as suggested above would result in a composting apparatus as recited in claims 14-16, including the presence of compostable material and worms.

Allowable Subject Matter

6. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter:

With respect to claim 6, while the prior art of record suggests the use of a plurality of drawers or trays that are stacked within a housing (See the prior art rejection above), the prior art of record fails to teach or fairly suggest that the drawers and receiving structures are constructed so as to be positioned within the housing such that the claimed spacer element spaces the drawer from a rear wall of the housing and extends in a downward direction such that when a drawer is pulled out from the housing the spacer element pulls a receiving structure underneath the drawer.

Response to Arguments

8. Applicant's arguments with respect to claims 1-10, 14-16, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William H. Beisner

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Primary Examiner
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W^HB